

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 56 of 1989

KAYOOM

V/S

THE MUTWALI COMMITTEE

Mr. JITENDRA CHOPRA, for the appellant:

Mr. RR NAGORI, for the respondent:

Date of Order : 2.11.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

This appeal has been filed by the defendant against the impugned judgments and decrees of the two learned courts below decreeing the plaintiff's suit for eviction.

The facts of the case are, that Mutwali Committee Idgah and Gulab Bagh, Jodhpur filed the present suit for eviction, through the secretary Mohd. Ibrahim alleging interalia that the plaintiff is a duly appointed Mutwali Committee, and is registered with the Rajasthan Board of Muslim Wakf, of which Mohd. Ibrahim is a secretary, appointed by the Board. It was then alleged that the defendant has committed default in payment of rent since 1973, and that he has not paid any rent after 17.2.1974. It

was then alleged that the defendant has constructed his own house which is much convenient, and comfortable, and that the defendant has sublet the premises without permission of the plaintiff to one Noor Mohd. It was also alleged that the plaintiff, vide registered notice dt. 11.9.1976 terminated the tenancy, which notice was duly received by the defendant on 14.9.1976. Inter alia with these averments, the suit for eviction was filed.

The defendant contested the suit, alleging inter alia that the rent was being realised by Kazi Yunis and Mohd. Ibrahim never received any rent. It was then pleaded that the property in possession of the defendant was earlier one plot, whereupon the defendant, with permission of the plaintiff, constructed a Pucka room, one Kucha room, and Chowk, and after these apartments were constructed, the Committee accepted the defendant as permanent tenant, and therefore, the defendant is not liable to be evicted. Receipt of notice was admitted and it was pleaded that appropriate reply was given, the allegation of subletting was denied. It was also denied that the defendant has constructed his own house. Then, in additional pleas it was pleaded that Mohd. Ibrahim has no right to file the suit as he has not been appointed as secretary in accordance with law, nor his appointment was published in official gazette, therefore, Mohd. Ibrahim was not entitled to file the suit. It was also contended that

Mutwali Committee has no right to file the suit, as even according to the plaintiff it is a Wakf property, for which Wakf Board alone can file the suit. It was also pleaded that constitution of Mutwali Committee is already under challenge in a suit named Imamuddin Vs. Wakf Board. Then, it was contended, that the tenancy has not been properly terminated. Then, the plea about the standard rent was also taken.

Rejoinder was filed by the plaintiff, maintaining that Mohd. Ibrahim Jagirdar has been lawfully appointed as secretary, and he is duly entitled to file the suit. It was pleaded that the tenancy has properly been terminated, and the suit has been filed by the right person. It was also pleaded that the plaintiff would initiate separate proceedings for enhancement of rent.

Learned trial court framed as many as nine issues. The first issue was about Idgah and Gulab Bagh being Wakf property, for which Mutwali Committee was constituted, and as to whether it is registered, and whether Mohd. Ibrahim is its secretary. Then, issue no.3 related to default. Issue no.4 was about the defendant having constructed his own house. Then, issue no. 5 was about subletting. Then, issue no. 6 was about the validity of notice.

Deciding issue no.1 the learned trial court held,

that Mohd. Ibrahim has deposed about constitution and registration of Mutwali Committee, and Certificate Ex. 1 has been produced, that he has been appointed as Secretary vide Ex. 2, whereby he has been given right to litigate. Similarly P.W.2 has also deposed same thing, and since there was no material evidence in rebuttal, issue was decided in favour of the plaintiff. Then, issues no. 3, 4, and 5 were also decided in favour of the plaintiff. Then, deciding issue no. 6, the notice was found to be valid, and ultimately the suit was decreed vide judgment dt. 7.8.1986.

This judgment was assailed by the appellant in appeal, inter alia on the ground, that Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, hereafter to be referred to as 'public premises act', has been amended in 1982, and thereby Wakf property has been included in the definition of 'public premises', and that this amendment has been introduced directing it to be always deemed to have been added, therefore, amendment is retrospective, with the result, that since proceedings could be initiated under that Act, Civil Court had no jurisdiction to entertain the present suit, and therefore, the decree is liable to be set aside. On the other hand, the respondent contended that the amendment was made with effect from 12.7.1982, and was not intended to apply to the pending suits. It was also contended that the provisions of Rajasthan Premises (Control of Rent & Eviction) Act are not

applicable to the present litigation, and that the tenancy has been terminated by valid notice under the Transfer of Property Act, the defendant is liable to eviction.

Learned lower Appellate Court found that the amendment made in public premises act cannot be said to be retrospective, so as to effect the pending litigation, and the rights of the parties are to be governed by the legal provisions as it prevailed on the date of the filing of suit. Then, the notice was examined, and it was found that thereby the tenancy has been validly terminated. In the result the appeal was dismissed.

It may be noticed here that from reading of the judgment, it does not transpire that finding of the learned trial Court on issue no.1 was at all challenged before the learned lower Appellate Court.

This appeal was admitted by this Court vide order dt. 20.10.1992, framing following three substantial questions of law:-

"(i) Whether the amendments made in section 2 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 whereby the Wakf properties have also been included in the definition of the public premises is retrospective in operation or not?

(ii) Whether the present suit for ejectment and arrears of rent is not maintainable in view of section 10A of the Rajasthan Public Premises Act in view of

the fact that Wakf property was included in the definition of the public premises from the very beginning?

(iii) Whether the mutwali committee of Idgah and Gulabbag through its Secretary Mohammed Ibrahim is entitled to file the present suit in their name without the authority of the Wakf Board?"

Learned counsel for the appellant made submissions on all the three questions, and submitted that on the face of the provisions of Section 2 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, which was amended, and the amendment was made stipulating the properties added to be always deemed to have been added. The amendment is retrospective, with the obvious result, that by virtue of Section 10A of the public premises act the Civil Court has no jurisdiction to entertain the present suit, and the decree is liable to be set aside. Then, arguing question no.3, relying upon the judgment of Mst. Mohammed Jahan Begum Vs. Abdul Hakim, reported in 1991 (III) CCC-6, it was sought to be contended, that even if Mohd. Ibrahim is said to be Mutwali, he was not entitled to file the suit, as the suit can be filed by the Wakf Board only, as admittedly the property is Wakf property, and the suit in substance is for recovery of the Wakf property.

Learned counsel for the respondent, on the other hand, supported the judgment.

I have considered the submissions, and have gone through the record, including the evidence of the parties and the documents.

It is a different story that the finding of the learned trial court on issue no.1 was not challenged before the learned lower Appellate Court, and obviously issue no.1 comprehends questions of fact, being as to whether the property is Wakf property, for management of which Mutwali Committee was constituted, which is registered with the Wakf Board, and as to whether Mohd. Ibrahim is its secretary. What is significant to note is, that it was nowhere in issue, that the suit could not be filed by Mutwali Committee, or that the suit could be filed only by the Wakf Board. Frame of the issues shows, that since the appellant had raised the factual controversy about constitution of Mutwali Committee, and validity of the appointment of Mohd. Ibrahim as its secretary, interalia on the anvil of appointment having not been published in Official Gazette, issue was framed. A look at the record shows that P.W.1 has clearly proved Ex. -1 and 2, and regarding validity thereof, there is no material cross-examination on the side of the appellant, and P.W.1 and P.W.2 have clearly deposed about constitution of Mutwali Committee, and appointment of Mohd. Iqbal, as its Secretary. A look at Ex.-2 shows that thereby Mohd. Ibrahim was authorised by the Wakf Board to conduct the litigation,

and nothing has been shown on the side of the appellant to substantiate, that said appointment was required to be made by publication in the Official Gazette. In that view of the matter, the findings of the learned trial court on the factual aspect about constitution of Mutwali Committee, and also about appointment of Mohd. Ibrahim as Secretary, do not require any interference, and since it was not in controversy, that the committee did not file the suit, other contentions need not detain me. That apart even if I were to consider the contentions on merits. A look at the judgment of Delhi High Court in Mst. Mohammed Jahan Begum's case shows, that the learned Judge was considering only the legal aspect of the matter, as to whether Mutwali under the Wakf Act has the power to file the suit of the nature filed by him in that case. As against this, in the present case the plaintiff has not relied upon its authority to file the suit in terms of the provisions of the Wakf Act but has claimed the authority to be flowing from Ex. 2, which is authorisation by the Wakf Board. As such I do not find any force in the submission, even on merits. Thus, the question no. 3 is answered against the appellant.

Then, coming to first two questions, of course, the language of the Amendment Act, whereby the amendment in Section 2 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act was made, it is provided as under:-

"2(b) after the sub-clause (ii), the following sub-clauses and Explanation shall be, and shall be deemed always to have been added namely;"

And by this, the Clause (viii) has been added covering Wakf property. However, by Section 1(2) the Amendment Act was provided to be deemed to have come into force on 12.7.1982. In my view, the question of retrospectivity of the provision of Section 2 as amended has different facets, and the provision is retrospective in certain respect, but cannot be said to be retrospective in other respects. To clarify, it is retrospective with respect to the properties of the Wakf, obviously meaning thereby, that the properties in existence, or coming into existence after the amendment, are always deemed to be public premises. But then it is not retrospective in the sense, to have the result of ousting the jurisdiction of civil court, with respect to litigation already pending on the commencement of this Amendment Act, being 12.7.1982. In other words, the litigations already instituted, have not been provided to be remaining not triable by the Civil Court. It may be recapitulated, that wherever such consequences were intended to be brought about, appropriate provisions were made in the respective legislations like Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993, and various other similar legislations, which clearly provided, that the litigations pending in the Court, of the nature,

cognizable by the Tribunal constituted thereby, were provided to stand transferred to the Tribunal under certain conditions. Obviously, therefore, if the legislature intended to bring about such consequences, such provision could have been enacted. Then, right to file suit is a substantive right, and after it has been exercised, it could not be taken away, otherwise then by express legislation in that regard, which is not there in the amendment made by Amendment Act of 1982. The obvious consequence is, that questions no. 1 and 2 are answered in the manner, that the amendment made in Section 2 of the Rajasthan Public Premises Act, including the Wakf property in the definition of public premises, is retrospective for the purpose of including existing property, but then is not retrospective for the purpose of ousting the jurisdiction of the Civil Courts, with respect to the litigations pending, as on the date of the commencement of the Amendment Act.

In view of my conclusions on the above substantial questions of law, I do not find any force in the appeal, and the same is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA), J.

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